IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 426 OF 2005

Shri Krishna Bapu Patil ... Appellant

V/s

Shri Bhau Rama Patil
(since deceased through L.R.s
& ors.) ... Respondents

Mr. R.V. More for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 13TH JULY, 2005

P.C.:

1. This appeal is preferred against the judgment and order passed by the Addl. District Judge, Islampur dated 30.11.2004 dismissing the appeal and confirming the judgment and order passed by the Jt. Civil Judge, Jr.Divn., Islampur, dated 23.10.1996 dismissing the suit of the plaintiff for declaration, injunction and alternatively for possession of the suit property.

2. The plaintiff filed the suit against the defendants on the ground that the property was ancestral property of one Andubi Krishna Patil and he was adopted son of

deceased Bapu. According to the plaintiff, he was in possession of the suit property and, therefore, was entitled for declaration regarding ownership title and ownership in the suit property and for other consequential reliefs.

The defendants challenged the suit on various grounds inter-alia submitting that the suit filed by the plaintiff was false and, as such, it was sought to be dismissed.

3. The learned Trial Judge adjudicated the dispute and came to the conclusion that though the plaintiff had proved that he was adopted son of deceased Bapu, it was not proved that he was in actual possession of the suit property and, as such, was not held entitled for consequential relief of perpetual injunction against the defendants and was non-suited by the Trial Court.

The appeal was carried to the Court of Addl. District Judge. After hearing both parties and perusing the evidence on record, he came to the conclusion that the learned Trial judge had appreciated the entire evidence in proper perspective and plaintiff had failed to prove that he was exclusive owner and possessor of the suit

property and, as such, it was held that he was not entitled for perpetual injunction of the suit property, especially when it was found that the respondent was having 1/2 share in the suit property and, as such, the suit came to be dismissed.

4. I have heard the learned counsel for the appellant. Perused the record.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal and the issues involved are based on factual aspects of the evidence which are seen to be properly appreciated by both the Courts below while coming to the conclusion that the plaintiff had no case to seek declaration and injunction. It is also seen from the judgment of both the Courts below that the evidence is properly appreciated in that regard and, therefore, it would brook no interference at this stage. Therefore, in the result, the appeal stands dismissed with no order as to costs.

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